IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

CRP.No. 510 of 2007

AA.107/2000 OF APPELLATE AUTHORITY (LR), ALAPPUZHA
SMP.54/1995 OF LAND TRIBUNAL, ERNAKULAM
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REVN. PETITIONER: PETITIONER

INDIRA MANGHAT,W/O.DAYANANDAN,
INDUKRISHNA,NADUVELI HOUSE,
RAVIPURAM ROAD,KOCHI-16.

BY ADV. SRI.P.KESAVAN NAIR

RESPONDENTS: RESPONDENTS
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1. N.RAGHAVAN MENON @ RAJAN,
S/O T.GOPALA MENON,NADUVELIL HOUSE,
RAVIPURAM ROAD,COCHIN-16.

2. MANAGER,VTK ESTATE,KALIKKOTTA PALACE,
P.O.TRIPUNITHURA,DT.ERNAKULAM.

3. GOVERNMENT OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO THE GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.SREEKUMAR (CAVEATOR)
SRI.K.G.CLEETUS

THIS CIVIL REVISION PETITION HAVING COME UP ADMISSION ON 09/08/2007, ALONG WITH CRP NO. 596 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON IA NO. 1291/2007 IN CRP NO. 510/2007.

DISMISSED

09/08/2007. **SD/- M.N.KRISHNAN, JUDGE.**

True copy

M.N.KRISHNAN, J

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C.R.P. Nos. 510 & 596 OF 2007

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Dated this the 9th day of August 2007

O R D E R

These two revision petitions are preferred against the order of the Appellate Authority(LR), Alappuzha in A.A.Nos.105 & 107 of 2000. The appellant in A.A.No.105 of 2000 is one Dayanandan @ Mohan and the appellant in A.A.No.107 of 2000 is one Indira Manghat, wife of Dayanandan. The dispute centres around 62 cents of land comprised in Sy.No.651. According to the revision petitioners, the property belonged to them, i.e. by virtue of a settlement deed No.1123/1914 and by devolution it has come into their possession and they are the persons in possession having the right of tenancy and therefore the orders passed by the Land Tribunal conferring the right on the first respondent Raghava Menon @ Rajan is perse incorrect and therefore it is liable to be set aside.

2. On the other hand, the contesting respondent would contend that the property comprised in Sy.No.651 having an extent of 62 cents belonged to Gopala Menon, who by virtue of a Will executed by him had bequeathed in favour of his son Raghava Menon @ Rajan and on the death of

Mr.Gopala Menon as the residuary property of Mr.Gopala Menon, it has devolved upon Rajan and therefore he is entitled to the right and the order passed by the Land Tribunal and confirmed by the appellate authority is in order and therefore does not require any interference. At the outset, I may like to point out that really this is a case not of tenancy dispute but inter se tenancy dispute, i.e. who is entitled to the property or in other words, who is having title to the property to get the certificate of purchase issued in favour of him. The case can be analysed through the documents relied on by the revision petitioners herein. The first document is of the year 1113 M.E., i.e. Document No.966/1113 executed by Kovilakam in favour of Thankamma @ Chandramathi, who is the mother of Dayanandan and mother of Kalyanikutty Amma. The property described in the said document is item No.2 comprised in Sy.No.619/5 having a extent of 37 cents. This property along with other properties purchased by the mother and some of the properties which belonged to Gopala Menon were settled by a document of 1123 M.E., i.e. Document No.1914/1123. According to the revision petitioners, as per the said settlement deed, the property now involved in the dispute was set apart to the share of their mother as item No.4 of B Schedule and by subsequent transactions as well, it has been set apart to that branch of the family and therefore Mr.Rajan cannot claim any right over that

property. There had been a document of the year 1986 wherein also the survey number shown is not 651, but the original survey number is shown in the first document of title. Learned counsel for the revision petitioners contends before me that when the parties were able to find out the mistake in the survey number rectification has been effected and it is evidenced by the documents of the years 1976 and 1990. 1976 document relates to that of a kudikidappukaran and 1990 is the rectification document. Learned counsel would contend that he had produced documents which would evidence payment of basic tax after the period of 1990. So far as a Land Tribunal is concerned, the Land Tribunal's main jurisdiction is to find who is the person entitled to the right of a cultivating tenant as on 1.1.1970. It is true that the words 'cultivating tenant' itself denotes that a person must be in possession of that land. In this case the documents which are produced by the petitioners are for a period after 1990 and the learned counsel for the contesting respondent would argue before me that the revision petitioners had applied for the right under the Kanam Tenancy Act and the first court allowed the same and it was reversed in the appeal by the first appellate court and on the basis of the original order so obtained taxes used to be collected and therefore it does not confer any real possession or right over the property. Now the appeal is filed by the revision petitioners to establish

their right over the property. In order to succeed they may have to depend upon the documents which really high lightened their rights and at the same time will have an effect of showing that the persons, who had been granted such an order does not have the semblance of right over the property. Admittedly the property belonged to the family of these persons. The document of title relied upon through the mother does not show incorporation of Sy.No.651 anywhere. Since it is admitted that the property belonged to the parents and when the document of title relied upon to trace out through the mother is significantly silent about the property's survey number, the natural corollary would be that the father had right over the property. If it is so, there is a Will executed in favour of the first respondent in the revision petitions and as per the terms of the Will the property has to devolve upon that person. In a case of this nature the court has to attempt to find out who has got a better case by applying the theory of preponderance of probabilities in a civil case. When the documents produced by the revision petitioners do not throw light directly regarding the right and when it can be presumed that the property belonged to the father, then of the two, the first respondent in the revision petitions will have a better claim over the property. It is in that back ground, the matter had been analysed by the appellate authority and had refused to interfere

with the decision of the Land Tribunal. The original landlord has not come into the scene at all either to support or dispute the claim of the rival persons before the Tribunal.

From these discussions, I hold that sitting in the revisional jurisdiction, this court cannot find any irregularity or illegality in the order passed by the appellate authority. Therefore I refrain from interfering with the said decision. Civil Revision Petitions lack merit and the same are dismissed. If the petitioners feel that it is a civil right to be adjudicated and if the law so permits, the order in the revision petitions shall not stand in the way.

M.N.KRISHNAN, JUDGE

Cdp/-